IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 3717 of 2007()

CC.1188/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

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PETITIONER:

NAJJIM.M.SAHIB, 41 YEARS,
S/O.MEERA SAHIB,
ANU VIHAR (KALLUNGAL HOUSE)
CHOORAKULANGARA, EATTUMANNOOR.P.O,
KOTTAYAM DIST.

BY ADV. SRI.B.S.SURESH (CHIRAKKARA)

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3717 of 2007

Dated this the 12th day of December, 2007

O R D E R

Petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The petitioner had entered appearance before the learned Magistrate. He had taken part in the proceedings. The matter stood posted to 17.09.07 for final hearing. On that day, the petitioner, a native of Kottayam, could not proceed to the court at Hosdurg to appear in person. He allegedly had informed his counsel about his inability to appear. The grievance of the petitioner now is that his counsel reported no instructions on that day and consequently a warrant of arrest has been issued against the petitioner. The petitioner finds such warrant of arrest chasing him. The bail bond has also been cancelled, it is submitted.

2. According to the petitioner, he is absolutely innocent. He had not shown any disrespect to the proceedings of the court. He had instructed his counsel and the report of no instructions by the counsel was an unexpected one. The petitioner is willing to

surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient

prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. In the peculiar facts and circumstances of this case, considering the submissions of the learned counsel for the petitioner, I direct that the warrant of arrest issued against the petitioner shall not be executed till 22.12.2007. On or before that date, the petitioner must appear before the learned Magistrate and seek regular bail.

(R.BASANT, JUDGE)

rtr/-